No. 3656.

United States Circuit Court of Appeals

For the Ninth Circuit.

BALDWIN SHIPPING COMPANY, INC., a Corporation,	*Appellant,*
vs.	
SOUTHERN PACIFIC COMPANY, a Corporation,	*Appellee.*

BRIEF FOR APPELLEE, SOUTHERN PACIFIC COMPANY.

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THE FACTS

The appellant is a corporation engaged generally in the freight forwarding business. The appellee is a common carrier by rail engaged in interstate commerce and subject to the provisions of the Interstate Commerce Act of 1887, amended by the Elkins Act of February 19, 1903, and the Hepburn Act of 1906.

The Pacific Coast terminal of the appellee is San Francisco. For the purpose of obtaining the inland haul on freight destined for Oriental export, and as an accommodation to shippers using its lines for this class of freight, the appellee made a practice of reserving for such freight, steamship space for the ocean carriage at the best available rates.

In June, 1917, the appellant requested the appellee to reserve steamship space for a quantity of steel articles for shipment to Japan. The requests that reservation be made involve three separate transactions, all similar in nature, aggregating space for 5250 tons. The appellee neither operated steamers on its own account nor had a traffic agreement or through tariff arrangement with any ocean carrier. It endeavored to book the space in the open market.

The record shows that at this period, Oriental freight space was difficult to obtain, either directly from the steamship companies or through brokers who had previously booked space and had the space for sale.

When the requests for booking were made in this case, the appellee immediately investigated available sources of ocean space and found that C. R. Haley Co., brokers, with whom it had conducted similar transactions, could supply the required space. The space was thereupon reserved, the freight booked, and the appellant notified of what had been done.

For reasons undisclosed in the record, this freight did not move from San Francisco when it arrived, and the appellant claims to have been compelled to pay a higher rate than that engaged through the appellee. The difference in the two rates is the amount in dispute.

Under this state of facts the appellee disclaims liability upon two distinct grounds: *First,* that it acted only as the agent of the appellant in booking the freight, and as booking was actually secured, its obligations in the transaction were entirely fulfilled; *second,* that if it is held to be a principal, the agreements were void as being in violation of the Interstate Commerce Act, heretofore referred to.

The District Court sustained both of these propositions. The appellee takes no different position here than it did in the Court below, and insists that its position and the opinion of the District Court are unassailable as having a sound basis, both in law and fact.

The Southern Pacific Company Acted Merely as the Agent of the Appellant in Booking This Space, and It Fully Performed Its Obligations in This Regard

At the outset of the discussion on this branch of the case, attention is directed to the pleadings. The charging allegations in all three counts of the libel are in identical terms. Referring to that in the first count (Record 7), this language is used:

> "That heretofore, to-wit, on or about the 22d day of June, 1917, libelee agreed with libelant to reserve steamer space for the transportation of and to transport or caused to be transported from San Francisco, California, to Japan, etc."

The alleged breach is pleaded in this language:

> "That libelee did not reserve steamer space for said commodity, or any part thereof."

The answer denies specifically the allegations or the libel, and denies that steamer space was not reserved (Record 15).

No attempt whatever was made in the proof to support the allegations to the effect that any agreement was made whereby appellee agreed to itself transport or cause to be transported the commodity mentioned. The breach of contract claimed, both in pleadings and proof, was a failure *to reserve* steamer space. A recovery must be predicated upon an alleged failure of the appellee to engage ocean cargo space.

The record shows that this space was in fact reserved and engaged by appellee. As the proof was being offered, this admission was made by libelant (Record 92):

> "Mr. GLENSOR. I have no objection to admitting that the Southern Pacific Company actually booked this stuff with C. R. Haley, that is, they made a sub-contract, made a contract on their own account with C. R. Haley."

This admission merely covers what the witness Boyson testified to at Record, pages 96, 97, where he stated that in each instance after talking to Miss Green, who placed the orders for appellant, he obtained and reserved steamer space from C. R. Haley Company.

The record shows that it was the practice in filling orders for booking such as that given by the appellant, to secure space if possible from the steamship companies direct, and if the companies

did not have the space, to place the order with brokers who did. At this time it was necessary in order to get space to place it with a broker (Record 90). It was the general practice to secure this space through the best available source (Record 93, 94). At this particular time no ocean space was available except through brokers (Record 97, 101, 102). Previous bookings had been made with the Haley Co. (Record 102).

Passing for a moment the question of agency, appellant claims that in actually reserving ocean steamer space in conformity with the requests received with a recognized agency having space for sale, everything was done which the law required the Southern Pacific Company to do. The record shows that the space was in fact reserved from a firm which had space to sell, and with whom previous dealings had been consummated. The libel alleges the failure to do something which it affirmatively appears was done. The lower Court so held. Certainly it could not for a moment be found on the record before the Court that steamer space on all three transactions was not engaged by the appellant. Wherein was there a breach?

But at best the appellant merely acted as the agent of the Baldwin Shipping Company in booking this freight. The appellant neither owned nor operated steamers engaged in this trade, or in any Pacific Coast trade. It published no tariff covering ocean freight (Record 88). The reservation of

space was done as an accommodation to shippers using its lines.

It is admitted in appellant's brief at page 8 that the transaction involving the reservation of ocean space was entered into by the Southern Pacific Company, because that company was to receive the inland haul on the freight to the port of export. The record bears out this admission in the statement of Mr. Stubbs at pages 55 and 56 of the record and the testimony of S. W. Brown (Record 94) where appellant's counsel directly asked the question:

> "Q. The idea back of the booking of this space was to get this stuff to move over your railroad to San Francisco, was it not?
>
> A. Generally speaking, yes."

The practice regarding these bookings is shown by the same witness at page 93 in this language:

> "The Southern Pacific would book space directly with the steamship company, if possible, and if not they would help their clients by booking it with brokers, but it was generally understood that the space was to be secured through whatever source was possible."

The letters advising the appellant that the bookings were made, themselves show an act done for the benefit of the shipper, not the appellee. Thus the first letter (Record 22):

> "We have booked for your account 2000 tons of pig iron, etc."

Appellant seeks to overcome the legal effect of the arrangement entered into by a claim that the appellee is estopped from claiming agency on the ground that it had concealed a material fact in its transaction concerning the subject-matter of the agency. The attempted estoppel was neither pleaded nor proved. It is based upon an assertion that the Southern Pacific Company refused to advise the Baldwin Company what steamer or steamship line the goods had been booked on.

There is no basis for such a contention. An agent certainly cannot be charged with a violation of duty to his principal by failing to disclose what he himself did not know. The record shows that in each instance the appellee advised appellant of everything that had transpired.

The testimony shows that in all of the contracts the Baldwin Company was given all of the information the appellant had. The contracts involved in the first and second causes of action are known as Nos. 607 and 608. These two contracts were booked by Mr. Boyson, an employee of appellee, and were in his handwriting (Record 98). He testifies as follows:

> "Q. You handled some of these transactions? A. Yes.
>
> Q. Did you come in contact with Mrs. Green? A. Not personally.
>
> Q. Did you talk with her, if you know, about making these bookings?
>
> A. I talked with the lady of the Baldwin Shipping Company's office.

Q. You did not go to the office, though, to see her? A. No.

Q. Was it over the telephone?

A. Over the telephone.

Q. Then you followed up this conversation by engaging this space and writing that you had done so? A. Yes.

* * * * * * * * * *

Q. Did you know what steamers at the time in June, when you engaged this space, it was to be shipped on?

A. *I had no information on that point.*

Q. Was it possible for you to get the information?

A. On repeated requests on Mr. Haley, he failed to give it to me.

Q. *Did you then give the Baldwin Shipping Company all the information you had on the subject?* A. *I did.*

Q. Were these transactions all handled in about the same way?

A. About the same manner."

In the case of the contract involved in the third cause of action which is known as No. 613, not only was the appellant notified, but a copy of the confirmation of the order to Haley Company was sent appellant. This letter is Exhibit 5, page 126, and testified to as having been received on the day the letter in Exhibit 6, page 127, was written. The witness Roche actually handled this item for

the appellee and says that the booking was confirmed to the Baldwin Shipping Company (Record 101).

From this evidence it appears that the Southern Pacific advised the appellant how and with whom the bookings in each case was made; that it *could not* supply data as to steamer or date of sailing because it did not have it; that it did give the Baldwin Shipping Company *all of the information* it had or could get on the subject of these bookings.

There certainly was no objection from the appellant that these bookings had been made with a broker rather than a steamship line, and there can be no question about written notice of the steps taken being given with reference to contract 613. The copy of appellee's letter to the broker (Exhibit 5, p. 126) which the Baldwin Company admittedly received, refers to contract 613. This same number appears in appellant's letter to appellee of the same date (Exhibit 6, p. 127), conclusively showing the identity of the transaction as understood by appellant.

In discussing this branch of the case it should be pointed out that the appellee never did more than agree to *book* this space (Exhibits 1, p. 121; 3, p. 123; and 5, p. 126). There was no limitation as to where it should be booked. This being the case it could be placed with any reliable source having such space to offer. It should be particularly noted that appellant's replies to the letters

advising that bookings had been made do not follow the terms of the original notices.

Nothing was ever said or done by the appellee with respect to a guarantee to protect the rate. The Baldwin Company insert this alleged guarantee in its letters and ask an acknowledgment which was never received. As pointed out *by the court* below, these letters of the Baldwin Company referring to a guarantee *are no part of the contract,* and merely express its interpretation of the agreement (Record 100).

The contention of appellant that appellee is estopped from making the claim of agency, admits that an agency existed. The claim of estoppel has no foundation in fact. There was no concealment of any material or other fact surrounding these transactions. The bookings having been made in accordance with the agreement, to the knowledge and apparent satisfaction of the appellant, we see no basis for a claim that the agent by any act involved itself in an individual liability.

If the Southern Pacific Company was acting only as the agent of appellant, a position which we maintain, and which is admitted by the claim of estoppel, there is nothing in the record to warrant a finding that the conditions of the agency were not entirely fulfilled. If the appellee was not the agent, still its contract was performed in making the bookings as agreed, for there is neither contention or proof that the Southern Pacific Company udertook to

transport the freight or do anything more than reserve ocean steamship space for it.

It is to be observed that a decision on the question of agency involves in some measure an issue of fact. Upon the subject of whether or not notice of all steps taken by the appellee was given to appellant, there is a sharp conflict in the testimony. All of the witnesses on this question appeared in person in the court below, and its finding should be conclusive on matters of fact in dispute. This rule is well settled. *1 Corpus Juris,* 1351, and the decisions of this Court of which *Petersen* vs. *Larsen,* 177 Fed. 617, is typical. There it is said:

> "On appeals in admiralty, when questions of fact depend on conflicting evidence, the decision of the District Judge who had an opportunity to see the witnesses and judge their appearance, manner and credibility, will not be reversed unless its clearly appears that the decision is against the evidence."

Also to the same end see:

Reed vs. *Weule,* 176 Fed. 660;
United S. S. Co. vs. *Hoskins,* 181 Fed. 962.

The Contracts Are Void as Being in Violation of the Interstate Commerce Act.

If the opinion of the court below on the subject of agency, which is in accord with the views herein expressed, is erroneous, then the contracts are invalid as a plain violation of the Interstate Commerce Act of 1887 and the amendments thereto. Unquestionably the Southern Pacific Company

could, as it did, act by way of accommodation as the agent of the appellant in making these bookings. More than this it could not do. As was said in *Hamlen* vs. *Illinois Central R. R. Co.*, 212 Fed. 324, a case later discussed at length:

> "All that can be claimed is that it is liable on its guaranty to secure the rate of $9.00 per long ton from New Orleans to Buenos Aires. But it had no right to make such a guaranty.
>
> That it arranged for transportation at that rate is admitted, *and that is the most it could lawfully do.*"

Furthermore, if the contract is open to two constructions it should be given that which would make it lawful, as it is presumed that the law has been obeyed (Civil Code 1963, Sub. 33).

Appellant in its brief makes a feeble contention which it is difficult for us to follow, to the effect that the appellee was not within the terms of the

Act. Section 1A of the Act provides:

> "That the provisions of this Act shall apply to * * * any common carrier * * * engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water when both are used under a common control * * * from one state * * * to any other state."

It is admitted that the Southern Pacific Company is a common carrier engaged in the transportation of passengers and freight by railroad between

states. This admission, together with one to the effect that *no tariff for this service was on file,* is found at Record, papes 72, 73, and also at page 67, where the following appears:

> "Mr. FORD: * * * The libel simply alleges that the Southern Pacific Company is a corporation. We desire to have an admission that it is a corporation engaged in interstate commerce, carrying freight and passengers within the United States.
>
> Mr. GLENSOR. It will be so admitted."

The Act provides that its terms shall apply to certain designated carriers. It is admitted that the appellee is within at least one of the designated classes. How can it now be seriously argued that the Act does not include the Southern Pacific Company?

We have no fault to find with the authorities cited to the effect that the Act does not apply to an independent ocean carrier. We are not here dealing with an independent ocean carrier, we are dealing with the corporate activities of a carrier designated in the Act, and whose rights and powers are prescribed by that Act. We concede the correctness of both *Ex Parte Koehler,* 30 Fed. 867, and *Pac. Mail S. S. Co.* vs. *Western Pac. R. R. Co.,* 251 Fed. 218.

The exact situation herein involved was presented in *Hamlen* vs. *Illinois Central R. R. Co.,* 212 Fed. 324. We quote from the agreed statement of facts in that case as follows:

"The case was submitted on an agreed statement of facts, which shows that the agent of the Illinois Central Railroad Company approached the plaintiff and asked for the shipments over its line to New Orleans, and agreed that the railroad company would undertake to get a rate for the ocean freight; that it arranged with the Pan-American Steamship Line, which at that time had steamers plying between the ports of New Orleans and Buenos Aires, to carry the freight at $9.60 per long ton, and so informed the plaintiff; that but for this fact the plaintiff would not have routed its freight over the defendant's line, but would have sent it by way of New York; that the goods were safely carried to New Orleans, and there delivered at the place designated in the bill of lading, the pier of the Pan-American Steamship Line, but when it arrived there the steamship line had become bankrupt and ceased to run its ships; that the defendant immediately notified the plaintiff of that fact, and thereupon the freight was taken to the port of Mobile and there reshipped at a higher rate than had been contracted for with the Pan-American Steamship Line; that for one of the shipments the the plaintiff had prepaid to the defendant the ocean freight, amounting to $247.67. It was also agreed that the defendant had never published or filed with the Interstate Commerce Commission a through rate to Buenos Aires."

It is at once apparent that the defendant in the *Hamlen* case did exactly what the appellee here is alleged to have done, namely, to obtain cargo space at a given rate, on an ocean-bound carrier at the port at which the rail transportation terminated. The contract did not include an agreement for the entire haul, land and water, or for *through* trans-

portation. There as here the railroad did engage space but through some cause beyond its control the same never became available to plaintiff who of necessity engaged other space at a higher rate. There is not a hair line differentiation to be made between the two cases on the facts.

The evidence in this case shows that the reason for respondents attempting to secure steamer space was prompted by its desire to handle the inland haul.

That the making of agreements to charter space, if enforceable, violate the plain provisions of the Hepburn Act, and would permit unlimited discriminations, is too plain for argument. For instance, several shippers in Chicago desire to ship goods to San Francisco for export to the Orient. In order to get the business of the largest shipper, a railroad offers to secure steamer space at $5.00 a ton below the market rate. The railroad accepts a loss of $5.00 on the ocean contract, charges this off against its freight income from the inland haul with the result that the large shipper has in fact obtained a rebate of $5.00 a ton over his smaller competitor, and has not in fact been charged the full published rate. Instances where contracts such as this could be made to work a similar violation could be multiplied beyond number.

No more persuasive language in support of this unassailable position could be found than that con-

tained in the opinion in the *Hamlen* case, disposing of both points herein urged. There it is said:

> "First. A railroad company has no power unless expressly, or by necessary implication, authorized by its charter, to guarantee the performance of duties by another carrier, and there is no evidence that the defendant is so authorized. It is true that a carrier may, at common law, lawfully enter into a contract for the carriage of freight over connecting lines by issuing a bill of lading whereby it undertakes absolutely to carry and deliver a shipment to a destination on another line, but there was no such contract here. *All that can be claimed is that it is liable on its guaranty to secure of $9.60 per long ton from New Orleans to Buenos Aires. But it had no right to make such a guaranty. That it arranged for the transportation at that rate is admitted, and that is the most it could lawfully agree to do.*

The cases relied on by counsel for the plaintiff (*Northern Pacific R. R. Co.* vs. *American Trading Co.,* 195 U. S. 439, 25 Sup. Ct. 84, 49 L. Ed. 269, and *Southern Pacific Co.* vs. *Interstate Commerce Com.,* 200 U. S. 536, 26 Sup. Ct. 330, 50 L. Ed. 585), may be distinguished on the facts, but that is unnecessary, as both of these cases arose and were determined by the Court prior to the enactment of Hepburn Act, June 29, 1906, c. 3591, 34 Stat. 584, 586. Section 2 of that act amends section 6 of the former act so as to read as follows:

> 'That every common carrier subject to the provisions of this act shall file with the Commission created by this act and print and keep open to public inspection schedules showing all the rates, fares, and charges for trans-

portation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation.'

It then proceeds to prescribe how the schedules shall be prepared and filed.

As it is not contended that any through rate to Buenos Aires was ever filed by the defendant, it could not indirectly assume a liability which the law prohibits it from assuming directly. The ocean rates were not required to be published, and, for reasons stated *in re* Export and Domestic Rates, 8 Interst. Com. Com'n R. 214, 276, *re* Tariffs and Export and Import Traffic, 10 Interst. Com. Com'n R. 68, and *Armour Packing Co.* vs. *United States,* 209 U. S. 78, 28 Sup. Ct. 428, 52 L. Ed. 681, could not properly be made.

Second. If such contracts were permitted, their effect would be to nullify the provisions of the Interstate Commerce Act prohibiting discrimination, for by guaranteeing a lower rate on the foreign line, the difference, if any, would have to be paid out of the earnings of its own line, resulting in a lower rate than that published and charged to other shippers for the carriage of freight over the lines of the railroads, and a lower rate than that specified in its schedules filed with the Commission. *Armour Packing Co.* vs. *United States,* 209 U. S. 56, 78, 28 Sup. Ct. 428, 52 L. Ed. 681.

Any contract by which a carrier of interstate freight assumes a more burdensome liability than is specified in the published schedules is a violation of the Interstate Commerce Act and void. *C. & A. R. R. Co.* vs. *Kirby,* 225 U. S. 155, 32 Sup. Ct. 648, 56 L. Ed. 1033; *Clegg* vs. *St. L. & S. F. R. R. Co.,* 203 Fed. 971, 122, C. C. A. 273; *C. C. C. & St. L. R. R. Co.* vs. *Hirsch,* 204 Fed. 849, 123, C. C. A. 145. In the *Kirby* case it was held that a carrier cannot legally contract with a particular shipper for an unusual service, unless it makes and publishes a rate for such service equally open to all. To guarantee a certain rate from New Orleans to Buenos Aires to one shipper was certainly an unusual service, and not equally open to all, for it had never been published.

Nor is it an excuse that the plaintiff did not know what rates had been published by the railroad company, and that it relied upon the representations of the agent of the company. It has been authoritatively determined that a shipper is conclusively presumed to have that knowledge. *K. C. S. Ry. Co.* vs. *Carl,* 227 U. S. 639, 653, 33 Sup. Ct. 391, 57 L. Ed. 683. Nor is the carrier liable for damages resulting from a mistake in quoting a rate less than the full published rate. *Illinois Cent. R. R. Co.* vs. *Henderson Elevator Co.,* 226 U. S. 441, 33 Sup. Ct. 176, 57 L. Ed. 290."

In this connection see also *Saitta & Jones* vs. *Penn. R. R. Co.,* 179 N. Y. S. 471, in which case a collection of the authorities is made, and also *Pacific Fruit & Produce Co.* vs. *Northern Pac. Ry.,* 186 Pac. 852, where this language is used:

"A carrier in interstate commerce can enter into *no contract of transportation* for which

there is not express authority in its filed and published tariffs."

Admittedly there was no filed or published tariff for the ocean rate herein undertaken to be obtained by respondent, and as a consequence no action will lie for the failure upon part of respondent to secure the space reservations, or transport the freight after the same had been made.

Appellant attempts to distinguish the *Hamlen* case on two grounds. The first is that the bill of lading was designed to cover the whole haul. The Court in its decision points out that plaintiff claimed a recovery on the alleged guarantee relative to ocean space *alone,* and the decision deals with the case from this standpoint. The second ground of distinction sought to be made is that there the export bill of lading expressly stipulated that the carrier was acting only as agent for the connecting line. This distinction does not enter into the Court's determination on the merits of the case, and has no bearing here, as the question of whether or not the Southern Pacific Company was an agent or principal is not determined by stipulation or written agreement, but is a legal conclusion to be drawn from the proven facts.

Two decisions are cited, claimed to be opposed in principle to the *Hamlen* case. These are *Northern Pac. R. R. Co.* vs. *American Trading Co.,* 195 U. S. 439, and *Southern Pacific Co.* vs. *Interstate Commerce Commission,* 200 U. S. 536. Both of these

cases are cited in the Hamlen decisions and as there pointed out, can be distinguished. In the first mentioned case the contract involved a through shipment to the Orient on a connecting oceanic transportation line, and on a rate equally open to all. The second case merely holds that it was the right of the initial carrier, after a rate from one point to another had been established, to designate the routing of the freight. Here again the same quoted tariff was open to every shipper. As pointed out in the last mentioned case, contracts by carriers can be made as before the act, "at least so long as they are reasonable and *do not otherwise violate the law.*" Both cases were decided prior to the enactment of the Hepburn Act of June 29, 1906, 34 Stats. 584, 586, requiring the filing and publication of a tariff covering all transportation charges made by a carrier subject to the act.

St. Louis Ry. vs. *Berge-Forbes Co.,* 139 S. W. 3, would appear to be opposed to the *Hamlen* case. It is a state court decision, never since followed, ignored in the *Hamlen* case, and contrary to the spirit and purpose of the Hepburn Act. A careful examination of the case will show that the matter of the illegality of the contract was *not an issue* and was *not pleaded* nor properly before the Court. What is there said on the subject of legality is wholly superfluous to a decision of the issues framed by the pleadings.

The Supreme Court of the United States has passed upon the effect of failure to publish rates for service as affecting the validity of a contract.

In *Chicago & Alton R. R.* vs. *Kirby,* 225 U. S. 155, a shipper attempted to recover damages for breach of a contract to carry a carload of horses upon a certain train, with a guaranteed time of arrival. The Supreme Court held this contract void, as involving a special service not disclosed by its tariffs. In commenting upon the scope and purpose of the act in question the Court used this language:

> "An advantage accorded by special agreement which affects the value of the service to the shipper and its cost to the carrier should be published in the tariffs, and for a breach of such a contract, relief will be denied, because its allowance without such publication is a violation of the act. It is also illegal because it is an undue advantage in that it is not open to all others in the same situation."

The purposes of the act have been defined in the same case in terms about which there can be no mistake. The act was designed to prohibit all means that might be resorted to to obtain rebates or concessions. At page 165 of the decision we find this definition of purpose:

> "The Elkins Act procedeed upon the broad lines and was evidently intended to effectuate the purpose of Congress to require that all shippers should be treated alike, and that the only rate charged to any shipper for the same service under the same conditions *should be the one established, published and posted as required by law.* It is not so much the particular form by which or the motive for which this purpose is accomplished, but the intention was to prohibit any and *all means* that might be resorted to to obtain or receive concessions and

rebates from the fixed rates, duly posted and published."

The opinion of Judge Rudkin in the case at bar expresses more clearly and concisely than can counsel the iniquities which would follow the sustaining of a contract of this nature. Would this Court for a moment countenance an agreement whereby in consideration of the Baldwin Shipping Company shipping its freight over lines of the appellee, the appellee would in turn give the shipper free office quarters in its San Francisco building? Attempts by indirection to circumvent the law have been condemned in numerous cases such as that of *C. & St. Louis Ry. Co.* vs. *Hirsch,* 204 Fed. 849, where a rent rebate was attempted, and *Clegg* vs. *St. L. & S. F. R. R.,* 203 Fed. 971, where an agreement to buy coal at a fixed rate was the form adopted.

In the case at bar the appellee disclaims any endeavor to violate the law. It maintains the legality of the contracts as ones of agency, but denies that they were ever intended as guarantees of a fixed rate for ocean transportation, and insists that if such a construction is placed upon them, they are void as a flagrant violation of the plain provisions of the Acts in question.

Appellee most respectfully submits that the decision of the District Court is unimpeachable upon both the grounds assigned in the opinion and should be affirmed.

Respectfully submitted,

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